IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 297 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRAJI KAPURAJI PARIHAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 297 of 2000

MR EE SAIYED for Petitioner No. 1

MR KG SETH-PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/02/2002

ORAL JUDGEMENT

#. This is a Revision Application filed by the petitioner above named - original accused in Criminal Case No.4966/1994 before the learned JMFC, Gandhinagar.

The facts of the case against the petitioner may be briefly stated as follows :-

#. The petitioner was a driver of the bus belonging to the Gujarat State Road Transport Corporation. He was plying his bus from Gandhinagar to Ahmedabad leaving Gandhinagar at about 6:15 p.m. to 6:30 p.m. and arrived at Khoraj Railway Crossing at about 7:00 p.m. The railway crossing was closed and, therefore, the bus was required to be stopped. When the passage opened the petitioner started his bus and crossed the railway crossing and after crossing some distance the said bus dashed against a truck coming from the opposite direction which resulted in an accident in which the passengers sitting in the bus sustained simple and grievous hurts and on account of the grievous hurts sustained, one Mahendrasinh Jadeja died. The petitioner being driver of the bus went to the Police Station and filed FIR. Investigation was gone into and after conclusion of the investigation, the Investigating Officer submitted charge-sheet against the petitioner for the offences punishable under Sections 304-A, 279, 337, 338 of the I.P.C. as well as for the offences punishable under the Motor Vehicles Act. It was alleged against the petitioner that the petitioner had driven his motor vehicle on public a road so rashly or negligently as to endanger the human life for personal safety of others and by such rash or negligent driving the petitioner caused the death of Mahendrasinh and also caused simple and grievous hurts to so many passengers travelling in the said bus and committed the said offence.

#. The petitioner was tried before the learned JMFC, Gandhinagar and at the conclusion of the trial the learned Magistrate found that the petitioner was guilty of criminal negligence and, therefore, he convicted the petitioner for all the aforesaid offences and after hearing the petitioner on the quantum of punishment (though technically it was not required to be done as it was a summons triable case before the learned Magistrate), the learned Magistrate passed an order sentencing the petitioner for a period of six months R.I. for the offence punishable under Section 337 of the I.P.C. He was required to pay fine of Rs.250/- and in default of payment of fine, he was required to further undergo S.I. for 50 days. For the offence punishable under Section 338 of the I.P.C., he was sentenced to suffer R.I. for 2 years and was required to pay fine of Rs.500/-. In default of payment of fine, he was required to suffer S.I. for 30 days. For the offence punishable under Section 304-A of the I.P.C. the petitioner was

required to suffer R.I. for 2 years and was directed to pay fine of Rs.1,000/-. In default of payment of fine, he was required to suffer further S.I. for 30 days. For the offence punishable under Section 279 of the I.P.C., the petitioner was sentenced to suffer R.I. for six months. Separate sentence was not awarded for the offence punishable under the Motor Vehicles Act.

#. Feeling aggrieved by the said judgment and conviction order dated 16.3.1998, the petitioner preferred Criminal Appeal No.8/1998 before the Sessions Court, Ahmedabad (Rural) at Gandhinagar unsuccessfully. The learned Additional Sessions Judge, Ahmedabad (Rural) at Gandhinagar dismissed the said appeal of the present petitioner by judgment and order dated 18.7.2000.

#. Feeling aggrieved by the said judgment and conviction order of the two Courts below the petitioner has preferred this Criminal Revision Application before this Court. The petitioner has contended before this Court that there was no material to connect the petitioner with the offence. That there was no negligence on the part of the petitioner. That bus was not being plied with high speed. That there is apparent illegality committed by the two Courts below in appreciation of evidence. That, therefore, the judgments and conviction orders are illegal and perverse and deserve to be set aside. The petitioner has therefore prayed that the present Revision Application be allowed and the two judgments and orders referred hereinabove be quashed and set aside.

#. On receipt of this Revision Application notice was issued and it was followed by the issuance of rule. Learned APP Mr.K.G.Seth, appears on behalf of the State. I have heard Mr.E.E.Saiyed for the petitioner and Mr.K.G.Seth, for the State. In fact, both of them have taken me through the oral evidence and through the findings and reasonings of the two Courts below.

#. Mr.Saiyed has argued at length that the two Courts below have committed serious illegality in appreciation of evidence on record. He therefore took me through the oral evidence before the trial Court. P.W. Gatorsinh Ramsinh Dabhi Ex.5 has positively deposed before the trial Court that the petitioner was time and again told to slow down the speed of bus. Similar fact was deposed before the trial Court by other witnesses also. This shows that even before the accident took place, the petitioner was driving the bus with high speed. This is a consistent evidence of other witnesses also.

#. At the time of the commission of the offence as the witnesses have said, the bus was going on the wrong side of the road and it dashed against the truck coming from the opposite direction. For this purposes the prosecution has examined Gatorsinh Ramsinh Dabhi, Kamlesh Shah, Nirmalaben Yashvantbhai, Chhotalal Chaturlal.

#. Now it would be relevant to consider that the witnesses have, by and large, deposed before the trial Court that the bus was going with high speed and on wrong side of the road and had dashed against the truck coming from the opposite direction.

##. Learned advocate Mr.Saiyed has argued that when some vehicles were coming from the back side of the bus and some vehicles were going ahead of the bus then in that event the petitioner could not have driven the bus with high speed. Even if we take it that some vehicles were coming from the back side of the bus and some were going ahead of the bus, again the fact remains that there is no evidence about the distance of those vehicles from the bus in question. On the other hand it is required to be considered that though the place in question was a populated road and that there was good traffic, the petitioner did not drive his bus with a moderate speed. The speed on high way is not material but the speed has to be controllable. It appears from the record that the petitioner could not stop his bus before it could dash with the truck coming from the opposite direction. In that view of the matter, looking to the evidence tendered by the witnesses it is amply clear that the bus was being driven at a high speed and was going on the wrong side of the road. These two things, taken together, can lead the Courts below to infer that the petitioner was negligent and negligence was culpable negligence on the part of the petitioner in driving the vehicle at the time when the accident took place.

##. It is a matter of record that about 18 persons have sustained injuries and one Mahendrakumar sustained grievous hurts and on account of such grievous huts he succumbed to the injuries.

##. Learned advocate for the petitioner has also argued that as per the evidence of Investigating Officer it was one way traffic. Fact remains that the truck was coming from the opposite direction as per the evidence of all witnesses and the petitioner had all reasons and time to stop his bus so as to avoid a collision with the truck coming from the opposite direction.

##. Mr.E.E.Saiyed has also argued that the petitioner had filed FIR and that shows his good conduct. However, it is an admitted fact that the petitioner had stated in his FIR that the truck driver was guilty for the said accident. Therefore, simply because the petitioner has filed FIR, it does not mean that he was not negligent in driving the bus at the relevant point of time.

##. The two Courts below have appreciated the oral evidence of the witnesses examined before the trial Court. The witnesses have consistently deposed before the trial Court that there was negligence on the part of the petitioner. There appears to be no illegality on the part of the two Courts below in holding petitioner guilty for the offences in question.

##. It is true that there are some contradiction with respect to the evidence of some witnesses on record. However, even if we ignore the evidence contrary to the statements of witnesses before the police, Investigating Officer, then also even remaining part of the evidence of witnesses takes us to the conclusion that the accident took place only because of the culpable negligence on the part of the petitioner. It is not explained as to why the bus was not brought to a stop when the petitioner was in a position to see the truck coming from the opposite direction. The bus was not brought to a stop and there is no dispute about the same. This fact shows that the speed was not moderate or it was not at least controllable and the petitioner could not control the bus and could not avoid the accident in question.

##. The learned advocate for the petitioner has relied upon a decision of Sayd Akbar vs. State of Karnataka, reported in AIR 1979 Supreme Court 1848. It was a case wherein it was observed that it was a case of accident due to error of judgment of driver driving the bus. The case before us does not have those facts. There is nothing on record to show that the driver made an attempt to stop the bus before it could collide with the truck coming from the opposite direction. It is also required to be considered that so far as the driver's cabin is concerned no damage has been caused to the said portion. It is only the portion right behind back of the seat of the driver that has met with the accident and damage. This shows that the petitioner had saved himself and has put the passengers right behind him to the danger of the accident.

##. Any way the above decision does not help the present petitioner in the facts of the case before us.

##. An attempt was made to argue that the witnesses were in Sachivalaya service and they united to give evidence against the petitioner. They however belonged to different depth even if they were travelling together daily, they had no reason to falsely implicate the petitioner in a serious offence like one punishable under under Section 304 of the I.P.C.

##. On going through the evidence on record it is found that there is no illegality committed by the two Courts below in appreciation of evidence and unless there is illegality shown to have been committed by the two Courts below in appreciation of evidence, it would not be possible for this Court to interfere with the findings of fact recorded by the two Courts below.

##. This is a Revision Application and the Court is exercising revisional jurisdiction under Section 397 read with 401 of the Criminal Procedure Code. Reappreciation of evidence is ordinarily not permitted in Criminal Revision Application unless a very strong case is made out and shown that the findings are perverse. This cannot be done simply because the two Courts below have taken erroneous view in recording the findings. The findings of facts recorded by the Courts below cannot be disturbed unless they are proved perverse. This can be gathered from the case of Ramaben vs. State of Gujarat, reported in 1992 (2) GLR 1530.

##. This is a revisional power and not appellate power and it can be exercised to do justice and not to do injustice even if the order sought to be revised is not in conformity with law. This can be gathered from the case of Kantilal Chawda vs. Nanabhai Chawda, reported in 1992 (2) GLR 1520. Then in Latifunnisa Usmankhan vs. Saiyed Ashrafali, reported in 1986 GLH 254, it has been clearly laid down that the order would be illegal and perverse when the order is based on no evidence or when no reasonable and prudent man would have come to such a conclusion.

##. In the case before us there are two concurrent findings of facts recorded by the two Courts below based on appreciation of evidence of so many eye witnesses. Therefore, even when the Court exercises appellate jurisdiction, it would not be open to disturb the concurrent findings of facts. The revisional jurisdiction is much restricted.

##. Having regard to the facts and circumstances of the

case and evidence on record and considering the findings of fact recorded concurrently by the two Courts, there is no scope for interference with the same. In short there is no merit in the present Revision Application, therefore, it deserves to be dismissed.

##. For the forgoing reasons, the Revision Application is order to be dismissed. The judgments and orders of the two Courts below are confirmed. Rule is discharged. The petitioner appears to be on bail pending disposal of this Revision Application. He shall surrender forthwith. If he does not surrender within four weeks, non bailable warrant against the petitioner shall be issued. Intimation to the surety shall be issued with a view to have proper compliance of this order.

(D.P. BUCH, J.)

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